

**FILED**

**NOVEMBER 8, 2007**

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

**07 C 6356**

JUDGE CASTILLO  
MAGISTRATE JUDGE BROWN

**EXHIBIT 5**

# VEDDER PRICE

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October 16, 2007

## VIA FEDERAL EXPRESS AND U. S. MAIL

Mr. Steven Fein  
c/o Mid-America Management Corporation  
1111 Superior Avenue  
Suite 1100  
Cleveland, Ohio 44114

Re: **2395 Sycamore Road**  
**DeKalb, Illinois 60115**

Dear Mr. Fein:

We represent Back to Bed, Inc. ("Back to Bed"). Specifically, Back to Bed asked us to write to you concerning Mid-America Management Corporation's ("Mid-America") violation of the parties' January 8, 2002 lease agreement (the "Lease"), as amended (the "Amendment"). Back to Bed sent written notice of Mid-America's violation directly to you on October 9, 2007 ("Notice") (copy attached). However, based on a visual inspection and an advertisement contained in the "Home" section of the Chicago Tribune dated Saturday, October 13, 2007 (copy attached), it appears that Mid-America is continuing to violate the Lease and Amendment by allowing space at the DeKalb County Shopping Center (the "Shopping Center") to be built-out for lease and occupancy by the Bedding Experts, Inc. (the "Bedding Experts"), a direct competitor of Back to Bed.

As you know, Paragraph 15 of the Amendment to the Lease expressly prohibits Mid-America from leasing retail space at the Shopping Center to businesses such as the Bedding Experts, which was not an existing tenant at the time of the Lease and Amendment:

Exclusive. Landlord agrees that so long as Tenant uses the Premises for the retail sale of mattresses, box springs, bed frames, bed headboards, brass bed pieces and related bedding and bedroom furniture and related items (the "Exclusive Items"), no other tenant or occupant of the Shopping Center shall be entitled to use its premises for the sale of the Exclusive Items, subject to the rights of existing tenants set forth on Exhibit "E" of the Lease.

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Mr. Steven Fein  
October 16, 2007  
Page 2

If left uncured, Mid-America's violation of the Lease and Amendment entitles Back to Bed to, among other things, "terminate the Lease and sue for damages, including interest, transaction costs and reasonable attorneys' fees." (Amendment ¶ 12.) Please be advised that such "damages" include Back to Bed's lost profits.

In light of the considerable damages, interest and transaction costs that Back to Bed will incur if the Bedding Experts is allowed to occupy retail space at the Shopping Center for the purpose of selling the Exclusive Items (as defined by the Amendment), Back to Bed hereby requests a written assurance from Mid-America that: (i) any and all build-out work for the Bedding Experts at the Shopping Center has ceased; and (ii) the Bedding Experts will not be permitted to lease or occupy retail space at the Shopping Center for purposes of selling the Exclusive Items during the term of the Lease. Back to Bed has reason to believe that the Bedding Experts is aware of Back to Bed's exclusive rights under the Lease and Amendment because the Bedding Experts previously asked Back to Bed to waive those rights, which Back to Bed respectfully declined to do.

Your prompt attention to this matter is requested and appreciated. If you have any questions or concerns, please do not hesitate to contact the undersigned. This letter does not set forth all of Back to Bed's rights, all of which rights are expressly reserved. Thank you.

Very truly yours,

  
Chad A. Schiefelbein

CAS/sck

Attachments

cc: Mr. Vito Favia (via e-mail w/ attach.)  
Lane R. Moyer, Esq. (w/ attach.)



10/9/2007

SENT VIA CERTIFIED MAIL: 7007 0710 0000 0470 3145

ATTN: Mr. Steven Fein  
c/o Mid-America Management Corporation  
1111 Superior Avenue  
Suite 1100  
Cleveland, OH 44114

RE: 2395 Sycamore Road  
DeKalb, IL 60115

Mr. Fein,

It has come to our attention that one of our competitors is set to be moving into the same plaza as us. Back To Bed has made many attempts to talk to you and has left you many messages. We have yet to receive any response from you to discuss this situation.

Per the "Addendum to Lease" that was signed on January 8, 2002 between Mattress Giant and Sunil DeKalb, and subsequently assigned to Back To Bed, under section 15, Exclusive, "no other tenant or occupant of the Shopping Center shall be entitled to use its premises for the sale of the Exclusive Items, subject to the rights of existing tenants set forth on Exhibit "E" of the Lease." I have attached the Addendum for you to review.

At this time, we will be contacting our lawyers and if necessary we will take legal action against your firm for refusing to comply with the lease.

Thank you,

Vito Favia  
Vice President

CC: Vedder Price- Lane Moyer

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